

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

WINSTON L. SPENCE, JR.,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:22-CV-135
(GROH)**

**DEPUTY SHERIFF J.A. SWARTZ,
SHERIFF CURTIS KELLER,
BERKELEY COUNTY COMMISSION,
MIKAELA D. TORBERT,
KATE B. HARDING,
CATIE WILKES-DELLIGATTI,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the Court is a Report and Recommendation (“R&R”) issued by United States Magistrate Judge Robert W. Trumble. ECF No. 7. Pursuant to this Court’s Local Rules and 28 U.S.C. § 1915(e)(2)(B), this action was referred to Magistrate Judge Trumble for a preliminary review to determine whether the Plaintiff’s Complaint set forth any viable claims. ECF No. 4. On September 28, 2022, Magistrate Judge Trumble issued his R&R, recommending that the complaint be dismissed. ECF No. 7. Magistrate Judge Trumble further recommends that the Plaintiff’s Motion for Leave to Proceed in Forma Pauperis [ECF No. 2] be denied as moot.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to conduct a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, this Court is not required to review, under a *de novo* or any other standard, the

factual or legal conclusions of the magistrate judge to which no objection is made. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file objections in a timely manner constitutes a waiver of *de novo* review and a plaintiff's right to appeal this Court's order. 28.U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Moreover, "[w]hen a party does make objections, but these objections are so general or conclusory that they fail to direct the district court to any specific error by the magistrate judge, *de novo* review is unnecessary." Green v. Rubenstein, 644 F. Supp. 2d 723, 730 (S.D. W. Va. 2009) (citing Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982)).

Objections to Magistrate Judge Trumble's R&R were due within fourteen days after being served with a copy of the same. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The R&R was mailed to the Plaintiff by certified mail, return receipt requested on September 28, 2022. On October 24, 2022, the Clerk noted that the R&R was returned undeliverable and unable to forward. ECF No. 8. The Court further notes that the Clerk's Notice and Court's Order of Referral were also returned as undeliverable. The Court notes that a plaintiff has an obligation to keep the Court informed of his current address.

Unsurprisingly, the Plaintiff has not filed objections to the R&R. Finding that the Plaintiff has failed to keep the Court informed of his current address and to timely file any objections, the Court will review the R&R for clear error.

In his R&R, Magistrate Judge Trumble found that the Plaintiff has failed to state a claim upon which relief can be granted. Upon careful review, and finding no error of fact or law, the Court **ORDERS** that Magistrate Judge Trumble's Report and Recommendation [ECF No. 7] is **ADOPTED** for the reasons more fully stated therein. The

Plaintiff's Complaint [ECF No. 1] is **DISMISSED WITH PREJUDICE** and the Motion for Leave to Proceed *In Forma Pauperis* is **DENIED AS MOOT**. ECF No. 2.

The Clerk of Court is **DIRECTED** to **STRIKE** this case from the Court's active docket. The Clerk is further **DIRECTED** to mail a copy of this Order to the *pro se* Plaintiff by certified mail, return receipt requested, at his last known address as reflected on the docket sheet.

DATED: October 25, 2022


GINA M. GROH
UNITED STATES DISTRICT JUDGE